RICHARD L. GOERGEN ET AL.

IBLA 98-122 Decided June 11, 1998

Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring a placer mining claim null and void ab initio. ORMC 153019.

Affirmed.

1. Mining Claims: Lands Subject to--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Generally

   A placer mining claim was properly declared null and void ab initio because it was located on land withdrawn from mining.

2. Mining Claims: Lands Subject to--Mining Claims: Location--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Effect of

   Even assuming the possibility of a valid existing right when the land was withdrawn, appellants could not assert or acquire any such rights solely because their claim was located on the same land encompassed by earlier extinguished mining claims. In order to assert a valid existing right, appellants must show that they have an unbroken chain of title from any mining claims that were in existence on the date of the withdrawal.

3. Mining Claims: Lands Subject to--Mining Claims: Location--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Effect of

   Where lands are withdrawn from location under the mining law, "subject to valid existing rights," the withdrawal attaches, as of the date of the withdrawal, to all land described by the withdrawal, including the lands covered by unpatented mining claims. The withdrawal is not effective against the claimant's possessory right, but if the withdrawal is still in existence at the time the claims are abandoned, the withdrawal becomes effective, eo instanti, as to the land covered

by such claims, and future mining claim locations are precluded. No further action is required to effect the withdrawal in such circumstances.

4. Mining Claims: Lands Subject to--Mining Claims: Location--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Effect of

Lands included in a withdrawal remain withdrawn until the withdrawal is revoked, modified, or terminated by appropriate official action, and it is immaterial whether the purpose of the withdrawal is being served or that the Public Land Order states an expiration date. Revocation or termination of the withdrawal after the date a mining claim is located does not restore or retroactively validate the claim.

APPEARANCES: Richard L. Goergen, North Bend, Oregon, pro se; Marianne Werner King, Esq., Office of the Solicitor, Pacific Northwest Region, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE PRICE

Richard L. Goergen, R. Todd Goergen, Mathew G. Goergen, Bethna Goergen, and Patrick Goergen 1/ have appealed a December 17, 1997, Decision of the Oregon State Office, Bureau of Land Management (BLM), declaring placer mining claim Brandy 5 (ORMC 153019) null and void ab initio because it was located on land withdrawn from mineral entry. 2/

1/ Richard L. Goergen filed the appeal for himself and as agent for and in association with the other named parties. Departmental regulations provide that "[a]n individual who is not otherwise entitled to practice before the Department may practice in connection with a particular matter on his own behalf or on behalf of (I) [a] member of his family." 43 C.F.R. § 1.3(b)(3). Based on the same last name and the shared address we assume that Goergen is representing members of his family and thus all are deemed appellants.

2/ Appellants' Notice of Appeal states that they are appealing ORMC 153017 PF. This is the claim number listed on top of the BLM Decision. However, the BLM Decision declares the Brandy 5, ORMC 153019, null and void ab initio. The confusion evidently arises from the fact that Appellants located placer claims, the Brandy 3, 4, and 5 on August 25, 1997, and BLM assigned them consecutive claim numbers, ORMC 153017, ORMC 153018, and ORMC 153019, and placed them in one parent file, ORMC 153017 PF. Thus, when BLM issued its Decision on the Brandy 5 it noted the lead number of the parent file, ORMC 153017 PF, as the number to refer to in reply, which is what Appellants did. It is clear from Appellants' Request for Stay and Statement of Reasons (SOR) that they understand that the Decision declared only the Brandy 5, ORMC 153019, null and void ab initio and are appealing only that determination.

The Brandy 5 placer mining claim, ORMC 153019, was located in the N½NW¼ of sec. 4, T 25 S., R. 14 W., Willamette Meridian, Coos County, Oregon, land that was withdrawn from mineral entry on April 29, 1993, by Public Land Order No. (PLO) 6973, for a period of 5 years. Mining claim ORMC 153019 was located on August 25, 1997, after the land was withdrawn. The BLM therefore determined that the land was not subject to location under the General Mining Law of 1872 (30 U.S.C. §§ 21-54 (1994)) and deemed the claim null and void ab initio. Appellants requested a stay of the effect of the BLM Decision when they filed their Notice of Appeal. Because we are deciding the case on the merits and affirming BLM, the request for stay is denied as moot.

In their SOR, Appellants note that PLO 6973 withdrew the land subject to valid existing rights and they argue that there were valid existing rights that predated the effective date of PLO 6973 and existed at the time PLO 6973 was issued. In support of this contention they have provided copies of the location notices for four placer mining claims, ORMC 123891-ORMC 123894 (Dreamer 1, 2, 3, and 4), located on August 26, 1989, by Gary Duval for himself and as agent for Marianne Duval, Harold Duval, and Priscilla Duval.

Appellants also assert that the "Final Coos Bay Shorelands Management Plan requires consistency with state and Federal laws as well as compliance with the Coos County Zoning and Land Development Ordinance and Oregon Coastal Management Program." (SOR at 3.) They generally contend that PLO 6973 was issued as a result of the Coos Bay Shorelands Management Plan, specifically the part that pertains to the Coos Bay Northspit Special Recreation Management Area, 3/ and suggest that this document, in conjunction with certain Coos County ordinances, somehow requires a different decision than that made by BLM, because the local population opposes recreational use of the land. (SOR at 2-3.)

Appellants further note that by its terms PLO 6973 expired on April 29, 1998, unless extended, and argue that the original purpose for the PLO (recreation) no longer exists and, moreover, that interested parties will oppose extension of the PLO. (SOR at 3.) In support of this argument, Appellants have provided a copy of a November 12, 1997, letter from the Weyerhaeuser Company Mill Manager in North Bend, Oregon, to the BLM Acting Umpqua Area Manager. The letter states that Weyerhaeuser owns land surrounding the BLM parcel on three sides and expresses opposition to use of the North Spit in Coos County for recreational purposes, arguing instead that the area should retain its industrial zoning. 4/

The BLM has submitted its Opposition to Request For Stay in which it questions the relationship between the Duval claims and Appellants'

3/ Appellants did not provide copies of the documents to which they refer in their SOR.

4/ We note that apart from generally referring to BLM land on the North Spit in Coos County, the letter does not identify any land by section, range, or township.

Brandy 5 claim, if any, but states that the Duval claims were previously voided and closed. (Opposition to Stay at 3.) The BLM has also provided a statement from Dean Delavan, the Senior Technical Specialist, Minerals, in the Branch of Realty and Record Service of the Oregon State Office, styled an "affidavit," in which Delavan avers that he has reviewed the mining claim records associated with the Duval claims and concluded that they were "previously voided" and closed, and that their only connection to the Brandy 5 location was that they embraced the same land. He did not supply the date(s) or reason(s) supporting BLM's action in voiding those claims, but Appellants have not challenged the assertion or any facts pertaining thereto.

In response to Appellants' contention that the Coos Bay Shorelands Management Plan provides encouragement for the most appropriate use of the land, BLM correctly points out that the Brandy 5 is on Federal land and that Federal actions must be authorized by Federal law. The BLM states that at the time Appellants filed the Brandy 5 location the land was withdrawn from mineral entry by PLO 6973 and any attempted location of a mining claim on land withdrawn from mineral entry is void ab initio. It concludes that the possibility that a withdrawal could be terminated in the future does not affect the status of the land at the time of the location.

[1] It is well established that a mining claim located on land which is not open to appropriation under the mining laws is properly declared null and void ab initio. Ronald W. Froelich, 139 IBLA 84, 85 (1997); Cotter Corp., 127 IBLA 18, 19 (1993); Kathryn J. Story, 104 IBLA 313, 315 (1988). The Brandy 5 is located on the N½NW¼ of sec. 4, T. 25 S., R. 13 W., Willamette Meridian, which was among the lands withdrawn from location and entry under the United States mining laws effective April 29, 1993. 58 Fed. Reg. 25949 (Apr. 29, 1993) The PLO stated that the withdrawal would expire 5 years from the date of the order unless the Secretary determined that the withdrawal should be extended. Thus, PLO 6973 was still in effect at the time Appellants attempted to locate the Brandy 5 on August 25, 1997.

Appellants do not dispute the fact that PLO 6793 withdrew the land encompassing the Brandy 5 from location under the mining laws on April 29, 1993, or that the withdrawal was still in effect on the date they located the Brandy 5. As indicated, they argue that the withdrawal under PLO 6793 was subject to valid existing rights in the form of the Dreamer 1 through 4 placer mining claims, ORMC 124891 through ORMC 124894, which were located on August 26, 1989, in sec. 4, T. 25 S., R. 13 W., Willamette Meridian, on the same ground as that contained in Appellants' claim. 5/

5/ The Dreamer 1 (ORMC 124891) was located in the N½NE¼NW¼ of sec. 4, Dreamer 2 (ORMC 124892) in the S½NE¼NW¼, sec. 4, Dreamer 3 (ORMC 123893) in the N½NW¼NW¼, sec. 4, and Dreamer 4 in S½NW¼NW¼, sec. 4. When added together these four placer mining claims encompass the N½NW¼ of sec. 4, which is the area comprising the Brandy 5.

[2] However, Appellants have neither shown nor asserted any connection with the Duvals, and they have not shown that the Dreamer claims were in existence on April 29, 1993. As we have said, BLM has provided the statement of its Senior Technical Specialist concluding that the Dreamer claims were "previously voided." Even assuming the possibility that the Duvals could assert a valid existing right, however, it is clear that Appellants could not assert or acquire any such right solely because their claim was located on the same land as the Duval claims. In order to successfully assert a valid existing right, Appellants must show that they have an unbroken chain of title to mining claims located on the subject land before it was withdrawn on April 29, 1993. American Resources, Inc., 44 IBLA 220, 222 (1979); see also Grace P. Crocker, 73 IBLA 78, 80 (1983). They have not done so. 6/ In any event, once the decision declaring the Dreamer claims null and void became final for the Department, any claim of a valid existing right was also extinguished.

[3] This Board succinctly described the effect of a withdrawal in Jack Stanley, 103 IBLA 392, 394 (1988), aff'd sub nom. Ptarmigan Co. v. Dept. of the Interior, No. 90-35369 (9th Cir. May 15, 1991, petition for rehearing denied Aug. 16, 1991):

> Where lands covered by mining claims are withdrawn from future entries `subject to valid existing rights' the withdrawal attaches, as of the date of the withdrawal, to all land described by the withdrawal, including the lands embraced by the claims. However, when the claims terminate, the withdrawal automatically becomes effective, eo instanti, [as] to the lands covered by the entry, thus closing them to future entries. No further action is required to effect the withdrawal. [Citations omitted.]

Therefore, the withdrawal effected by PLO 6793 attached to the land in question on April 29, 1993, subject to valid existing rights.

As Appellants have not shown BLM's statement regarding the status of the Duval claims is erroneous or irrelevant to the PLO here at issue, we must conclude on the record before us that when those claims were voided the withdrawal of the lands immediately became effective as to those lands, and this stood as a bar to the location of the Brandy 5. 7/ Cotter Corp., 127 IBLA at 20.

[4] This conclusion that the Brandy 5 was located on land not open to mineral entry is not changed by the question of whether the purpose

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6/ Appellants would also have to show that the location notice for the Brandy 5 actually was an amended location notice for the Dreamer claims and not a relocation. Grace P. Crocker, supra, at 80; American Resources, Inc., supra, at 223.

7/ Moreover, if the Dreamer claims were still valid when Appellants attempted to locate the Brandy 5 claim, Appellants' claim could not be sustained because the land would not have been available.

for issuing PLO 6793 continues or by stating an expiration date in the PLO. Lands included in a withdrawal remain withdrawn until the withdrawal is revoked, modified or terminated by appropriate official action. As we have observed in the past, "[e]ven assuming arguendo that revocation of the withdrawal subsequent to the date of the location of appellants' placer mining claims was accomplished, the revocation would not restore or validate appellants' claims." Kathryn J. Story, 104 IBLA at 315; Ronald W. Ramm, 67 IBLA 32 (1982); Tenneco Oil Co., 8 IBLA 282 (1972).

We find that the record clearly establishes that the lands described in Appellants' mining claim had been withdrawn from mineral entry several years before the claim was located, and that BLM properly found the claim to be null and void ab initio.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

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T. Britt Price
Administrative Judge

I concur:

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John H. Kelly
Administrative Judge